

1 Gregg McLean Adam, No. 203436
Jonathan Yank, No. 215495
2 Gonzalo C. Martinez, No. 231724
Jennifer S. Stoughton, No. 238309
3 **CARROLL, BURDICK & McDONOUGH LLP**
Attorneys at Law
4 44 Montgomery Street, Suite 400
San Francisco, CA 94104
5 Telephone: 415.989.5900
Facsimile: 415.989.0932
6 Email: gadam@cbmlaw.com
jyank@cbmlaw.com
7 gmartinez@cbmlaw.com
jstoughton@cbmlaw.com

8
9 Attorneys for Plaintiff
San Jose Police Officers' Association

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SANTA CLARA

12
13 SAN JOSE POLICE OFFICERS'
ASSOCIATION,

14 Plaintiff,

15 v.

16 CITY OF SAN JOSE, BOARD OF
17 ADMINISTRATION FOR POLICE
AND FIRE DEPARTMENT
18 RETIREMENT PLAN OF CITY OF
SAN JOSE, and DOES 1-10, inclusive,

19 Defendants.
20

No.

**DECLARATION OF DAN ICHIGE IN
SUPPORT OF SJPOA'S *EX PARTE*
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ORDER TO
SHOW CAUSE REGARDING
PRELIMINARY INJUNCTION**

21 I, Dan Ichige, declare and say:

22 1. I am employed by the City of San Jose as a Police Officer and am a
23 member of the SAN JOSE POLICE OFFICERS' ASSOCIATION ("SJPOA"). I have
24 worked as a Police Officer for the City of San Jose since 1996. Before that, I worked as a
25 Police Officer for the City of Fremont from 1990 to 1996. As a result of my employment
26 with the City of San Jose, I am familiar with the facts in this matter, as well as those set
27 forth in this Declaration. If called upon as a witness, I could and would testify
28 competently to these facts.

1 2. I submit this declaration in support of the SJPOA's *Ex Parte* Application
2 for Temporary Restraining Order and Order to Show Cause Regarding Preliminary
3 Injunction ("*Ex Parte* Application for TRO").

4 3. In July 2011, San Jose Police Officers agreed to a 10% pay cut that will
5 be in effect until at least June 2013. This pay cut is in addition to increases to employee
6 contributions for retirement benefits (including increases to employee-paid retirement and
7 retiree health care costs) that amount to an approximate additional 17% decrease to my
8 take-home pay.

9 4. I am informed that this voluntary pay cut, combined with increases to the
10 employee-paid retirement/retiree health care costs in recent years, have made San Jose's
11 police officers among the lowest paid police in the region taking into account total
12 compensation. We currently pay more into our retirement than any other police agency in
13 the region. Effective June 24, 2012, we are slated for an additional approximate 2%
14 decrease to take home pay which will put us even farther behind other law enforcement
15 agencies in the region.

16 5. The cumulative impact of the pay reduction along with the increases to
17 employee-paid retirement/retiree health care costs has forced many officers to take
18 positions with other police agencies in the region. I know several officers who have
19 already left the department and many more who are considering leaving should additional
20 decreases to pay and/or pension benefits occur.

21 6. The prior pay reduction and increases to employee-paid retirement/retiree
22 health care costs have forced me to cut back on most non-essential spending in order to
23 have enough money each month afford basic living expenses. As a result, it is getting
24 increasingly difficult to save any extra money for emergencies.

25 7. Measure B, if implemented, would require that I and other San Jose
26 police officers begin paying 50% of the costs of retiree healthcare, including both the
27 normal cost and unfunded liability. Currently, the unfunded liability percentage is 32%
28 which means that my salary immediately will be decreased by at least another 9% for the

1 unfunded retiree health care costs (because we are already paying 7% of the unfunded
2 retiree health care costs) although I will receive the same level of benefits from the City.
3 If this occurs, it will have a devastating impact on my financial stability.

4 8. I have also been informed that the City will start charging me for 50% of
5 the unfunded pension liability although the implementation of the unfunded pension
6 liability charges will be phased in over time. The implementation of this additional
7 decrease will make my financial situation even more precarious because it will reduce my
8 salary by an additional 16% when fully implemented. I have never previously had to pay
9 for unfunded pension liability.

10 9. Measure B will also modify disability retirement for San Jose police
11 officers, as detailed below, such that it will no longer be of any benefit to me. I consider
12 comprehensive disability retirement protection an absolutely crucial employment benefit
13 for my line of work because police work is extremely physically demanding and
14 dangerous. I have first hand knowledge of just how real the threat of serious injury is
15 because I was shot in the abdomen by a suspect during a routine domestic violence call
16 out. Due to the gunshot wound, I had to have emergency surgery and then spend five to
17 seven days in the hospital recuperating. Three days after I was released from the hospital,
18 I was readmitted when they found a softball size cyst had developed in my abdomen. I
19 had another surgery to drain the cyst and spent another five to seven days in the hospital.
20 I was out of work for 6 months while I recovered and have to take medication for the rest
21 of my life to aid my digestion.

22 10. Although my injury was serious, I was fortunate enough to return to full
23 duty after six months. However, it reinforced the fact that police officers face grave
24 threats to their life and limb every day. The call out I was responding to on the day I was
25 shot (domestic violence) is perhaps the most common type of call police officers respond
26 to. There was no mention of a weapon and I had no indication that the suspect was armed
27 until I was shot. That this particular suspect continued shooting at my backup when he
28 arrived underscores just how dangerous even the most common call outs can be. I would

1 not have chosen or continued my career in law enforcement with the San Jose Police
2 Department without the knowledge that I would be protected with full retirement benefits
3 in the event that I am disabled as a result of actions taken in the line of duty while
4 performing my job protecting the citizens of San Jose.

5 11. Under the City of San Jose's current disability retirement plan for police
6 officers, I would be deemed disabled if I am no longer able to perform duties within my
7 peace officer classification (i.e. the normal duties of a police officer). Under the current
8 system, if I was rendered disabled, I would be entitled to retirement disability payments of
9 50% of my current salary for the first 20 years of service and an additional 4% for every
10 year of service thereafter. The City explained these rights to me many times throughout
11 my career and I have relied on these rights throughout my career to protect my family's
12 financial security should I be injured in the line of duty.

13 12. Measure B, if passed by San Jose electorate, would eviscerate the police
14 disability retirement plan. My understanding is that instead of analyzing whether I will be
15 able to perform police officer functions, the City will analyze whether I can perform the
16 job functions of any position within the Police Department, including jobs that consist
17 primarily of administrative tasks. If I am found to be physically able to perform the job
18 functions of any position within the Police Department, my disability application will be
19 denied. More troubling, if the job or jobs that I have been found to be able to perform are
20 occupied, I will be terminated from city employment without any retirement benefits. In
21 my experience, the non-police jobs in the department are Alarm Technician (1 positions),
22 Crime Prevention Specialist (5 positions), Latent Fingerprint Examiner (5 positions), and
23 Police Artist (1 position). I do not recall when any of these positions was vacant for any
24 significant period of time.

25 13. If the changes delineated in the prior paragraph are implemented, it will
26 have an immediate and catastrophic impact on me if I become disabled as a result of
27 actions taken in the line of duty, as it will virtually eliminate the availability of any
28 retirement pension. Essentially, the changes have all but guaranteed that I will be

1 terminated and left without the means to support myself as a result of being injured in the
2 line of duty. I also consider this to be the worst form of betrayal by the City. I have shed
3 blood for the City and ask nothing else in return but financial security should I be injured
4 and unable to return to the line of duty.

5 14. In light of this risk, if Measure B passes, I and (I am informed) many of
6 my colleagues will look for law enforcement work at departments that maintain full
7 disability retirement coverage, rather than risk being hung out to dry during such a time of
8 need. I have already started looking for jobs in other departments. Moreover, I and other
9 officers will no longer volunteer for high-risk assignments as I have done in the past. In
10 fact, I believe the San Jose Police Department will find it difficult, if not impossible, to
11 find enough officers, not only to fill these crucial roles, but also to simply maintain an
12 adequate force to fulfill its public-safety and crime-prevention roles.

13 I declare under penalty of perjury under the laws of the State of California that
14 the foregoing is true and correct and that this declaration is executed this ____ day of
15 June, 2012, _____, California.

16
17 _____
18 Dan Ichige
19
20
21
22
23
24
25
26
27
28

1 terminated and left without the means to support myself as a result of being injured in the
2 line of duty. I also consider this to be the worst form of betrayal by the City. I have shed
3 blood for the City and ask nothing else in return but financial security should I be injured
4 and unable to return to the line of duty.

5 14. In light of this risk, if Measure B passes, I and (I am informed) many
6 of my colleagues will look for law enforcement work at departments that maintain full
7 disability retirement coverage, rather than risk being hung out to dry during such a time of
8 need. I have already started looking for jobs in other departments. Moreover, I and other
9 officers will no longer volunteer for high-risk assignments as I have done in the past. In
10 fact, I believe the San Jose Police Department will find it difficult, if not impossible, to
11 find enough officers, not only to fill these crucial roles, but also to simply maintain an
12 adequate force to fulfill its public-safety and crime-prevention roles.

13 I declare under penalty of perjury under the laws of the State of California
14 that the foregoing is true and correct and that this declaration is executed this 4th day of
15 June, 2012, SAN JOSE, California.

16
17 

3365

18 Dan Ichige